

The Honorable Robert S. Lasnik

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON

Phimpa Thepvongsa,

Plaintiff Pro Se,

v.

Regional Trustee Services, Old
Republic Title LTD., Ocwen Loan
Servicing, LLC, Saxon Mortgage
Services, Mortgage Electronic
Registration Systems, Inc., Deutsche
Bank National Trust Company, Morgan
Stanley ABS Capital I Inc., and Doe
Defendants 1 through 20,

Defendants.

Case No. C10-1045 RSL

**STIPULATED ORDER TO STAY
CASE PENDING RESOLUTION OF
THE MERS ISSUES PRESENTED
IN *BAIN V. ONEWEST BANK*,
*F.S.B. AND SELKOWITZ V. FIRST
AMERICAN TITLE INSURANCE
COMPANY* BY THE
WASHINGTON SUPREME COURT**

Stipulated Order to Stay Case

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2. All deadlines in the Court's Minute Order of June 8, 2011, including but not limited to the discovery and dispositive motion deadlines, shall be vacated. Discovery shall remain open until after determination of the MERS issues, and upon further court order.

Dated: December 22, 2011

**MUELLER & ASSOCIATES,
INC. P.S.**

/s/ Edward L. Mueller

Edward L. Mueller
Attorneys for Plaintiff,
PHIMPHA THEPVONGSA

Dated: December 22, 2011

HOUSER & ALLISON
A Professional Corporation

/s/ Robert W. Norman, Jr.

Robert W. Norman, Jr.
Attorneys for Defendants,
OCWEN LOAN SERVICING, LLC,
SAXON MORTGAGE SERVICES,
INC., MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC.,
and DEUTSCHE BANK
NATIONAL TRUST COMPANY,
AS TRUSTEE FOR MORGAN
STANLEY ABS CAPITAL I INC
TRUST 2007-NC4

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Joint Stipulation to Stay Case

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TO THE CLERK AND ALL INTERESTED PARTIES:

Plaintiff, Phimpha Thepvongsa ("Plaintiff"), Defendants, Ocwen Loan Servicing, LLC ("Ocwen"), Saxon Mortgage Services, Inc. ("Saxon"), Mortgage Electronic Registration Systems, Inc. ("MERS"), Deutsche Bank National Trust Company, as Trustee for Morgan Stanley ABS Capital I Inc Trust 2007-NC4 ("Deutsche Bank as Trustee"), and Regional Trustee Services Corporation file the following Joint Stipulation, and in support thereof, state the following.

Plaintiff filed a Second Amended Complaint alleging violations of the Washington Deed of Trust Act against MERS, Deutsche Bank as Trustee, and Regional Trustee Services Corporation. *See* SAC, ¶¶ 3.1-3.3. Plaintiff alleges that MERS had no interest in "Plaintiff's signed original Note so as to enable MERS to sell, transfer, and assign the note to anyone...[,]" and that MERS is not a lawful beneficiary under his Deed of Trust. *See* SAC, ¶¶ 3.2.2, 2.4.6.-2.4.7.

In the cases of *Bain v. OneWest Bank, F.S.B.*, 2011 WL 917385 (W.D. Wash. Mar. 15, 2011) ("*Bain*") and *Selkowitz et al v. First American Title Insurance Company et al*, Case No. 3:10-cv-05523-JCC, Judge Coughenour stayed the cases and certified the following questions to the Washington Supreme Court:

1. Is Mortgage Electronic Registration Systems, Inc., a lawful "beneficiary" within the terms of Washington's Deed of Trust Act, Revised Code of Washington section 61.24.005(2), if it never held the promissory note secured by the deed of trust?

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2. If so, what is the legal effect of Mortgage Electronic Registration Systems, Inc., acting as an unlawful beneficiary under the terms of Washington's Deed of Trust Act?

3. Does a homeowner possess a cause of action under Washington's Consumer Protection Act against Mortgage Electronic Registration Systems, Inc., if MERS acts as an unlawful beneficiary under the terms of Washington's Deed of Trust Act?

This Court stayed determination of a Motion for Summary Judgment pending resolution of the above MERS issues by the Washington Supreme Court. *See Pavino v. Bank of America, N.A.*, 2011 WL 281788 (W.D.Wash. Jul. 18, 2011) (Judge Lasnik).

Plaintiff and Ocwen, Saxon, MERS, and Deutsche Bank as Trustee agree that issues that will be decided in the *Bain* and *Selkowitz* cases will have an impact on this case, including the likelihood of prevailing on a Motion for Summary Judgment, and decisions regarding settlement of the case. The parties also agree that, once the MERS issues in *Bain* and *Selkowitz* are resolved, the parties will be more certain about areas of discovery that will be pertinent for a Motion for Summary Judgment and/or trial. The parties have not completed their desired discovery, and seek more time do so.

Accordingly, the parties stipulate and agree that:

1. This case shall be stayed pending the determination by the Washington Supreme Court of the MERS issues presented by this Court in *Bain* and *Selkowitz*.

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1 Dated: December 22, 2011

ROBINSON TAIT

2 /s/ Nicolas A. Daluiso

3 Nicolas A. Daluiso
4 Attorneys for Defendant,
5 Regional Trustee Services
6 Corporation

7 **IT IS SO ORDERED.**

8 Dated: _____

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10 Judge Robert S. Lasnik
11 United States District Court for the
12 Western District of Washington
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